

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

2007 JUN 27 A 8:51

BY RONALD R. CARPENTER

CLERK

NO. 79973-3

THE SUPREME COURT FOR THE STATE OF WASHINGTON

CITY OF SEATTLE

Petitioner,

v.

STEPHEN KLEIN and MELISSA DEIBERT,

Respondents.

REQUEST FOR JUDICIAL NOTICE

CHRISTINE A. JACKSON
WSBA NO. 17192
Attorney for Respondents

The Defender Association
810 Third Avenue, Suite 800
Seattle, WA 98104
(206) 447-3900, ext. 704
chris.jackson@defender.org

I. IDENTITY OF PARTY & RELIEF REQUESTED

Stephen Klein asks this court to take judicial notice of the fact reflected in the Seattle Municipal Court record in his case that he quashed the outstanding warrant that served as a basis for the City's motion to dismiss his appeal. Appendix 1.

II STATEMENT OF RELEVANT FACTS

On May 1, 2007, Mr. Klein was booked into the King County Jail on an outstanding warrant issued in Seattle Municipal Court No. 480244, the case which is the subject of Mr. Klein's appeal. Appendix 1 (docket). The next day, Mr. Klein appeared in Seattle Municipal Court and was committed on the remaining 2 days of the unserved portion of his sentence.

III AUTHORITY

Courts have the authority to take judicial notice of undisputed, readily determined facts at any stage of the proceedings, including appeal. ER 201.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

ER 201(b). A court generally may take judicial notice of court records, particularly in the same case. State v. Duran-Davila, 77 Wn.App. 701, 892

P.2d 1125 (1995) (noting that the “same case” limitation has been criticized).

The fact that Mr. Klein was booked on the warrant that was the factual basis for the City’s motion to dismiss is a judicially cognizable fact. It is not subject to reasonable dispute because it is reported in the Seattle Municipal Court’s docket in this case, the accuracy of which cannot reasonably be questioned.

The fact that Mr. Klein has been returned to custody and is attending to his probation matters in the municipal court is significant *because Mr. Klein’s appeal has not yet been dismissed*. The U.S. Court of Appeals for Seventh Circuit held that due process¹ prevents a state from dismissing a fugitive’s appeal where he returns to the jurisdiction before the appeal is dismissed. Ruetz v. Lash, 500 F.2d 1225, 1229-30 (7th Cir. 1974) (appellant did not “deliberately bypass” state courts where appeal dismissed under the fugitive disentitlement doctrine after appellant was returned to custody). The

¹Where states provide an appeal as of right from a criminal conviction, “the scheme for appellate review must conform to *fourteenth amendment* requirements of equal protection and due process.” Ruetz, 500 F.2d at 1229, *citing*, Griffing v. Illinois, 351 U.S. 12, 18 (1956) (italics in original).

court explained.

In none of the [fugitive disentitlement] cases cited above had the appellant returned to the jurisdiction of the court before the appeal was dismissed. Indeed, many of the courts, in anticipation or hopes of the appellant's return, provided a grace period before actually dismissing the case.

Appellant's motion to correct errors, a requisite to filing an appeal, was timely filed. No action was taken thereon until appellant had been returned to the jurisdiction of the court. His request for appeal only then was denied. Under this circumscribed set of facts, we are unable to discern any rational basis for the court's action.

Ruetz, 500 F.2d at 1230.

Mr. Klein's appeal has not yet been dismissed. Since he has returned and submitted to the municipal court's jurisdiction, dismissal of his would violate his federal constitutional right to due process.

Respectfully submitted this 27th day of June, 2007,

Christine A. Jackson #17192
Attorney for Respondent Klein

NO. 79973-3

THE SUPREME COURT FOR THE STATE OF WASHINGTON

CITY OF SEATTLE

Petitioner,

v.

STEPHEN KLEIN and MELISSA DEIBERT,

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MUNICIPAL COURT OF SEATTLE
DOCKET

r295002

REVOCATION HEARING SET BY COURT

Next Hearing: FRIDAY 9:00 AM 07/13/2007
HEARING 2544137 SEQ NR 9999 COURTROOM 1002
SEATTLE JUSTICE CENTER

Case Status: OPEN Jurisdiction EndDate: 10/31/2008

CITY OF SEATTLE, Plaintiff

** DOMESTIC VIOLENCE **
** OPEN **

Vs.

KLEIN, STEPHEN BARTLETT , Defendant

Case No: 480244
File Loc: REC
Def No: 15320
Incident No: 5551612
Custody: IN
Rltd Grp No:
Co-Def's:

Address: 19626 FILBERT RD
BOTHELL, WA 98012
/ (Home)

DOB: 01/03/1957 Age: 50 Sex: M Race: W Lang:

Sentencing Judge:

Prosecutor:

Defense Attorney: SAMUEL, ANNA

206 674/4700

Interpreter:

** Charges **

Chrg Doc No: Type: BK Viol Date: 12/30/2005 Filing Date: 12/30/2005

Chrg 1: ASSAULT
12A.06.010 Plea: NG Find: G Status: AF
Disposition: APPEAL FILED

BAIL BAIL NOT FORFEITABLE SMY
Start:05/02/2007 Due:05/02/2007 End:
Amt:2,000 Susp: Curr:2,000

BAIL BAIL NOT FORFEITABLE NCH
Start:12/31/2005 Due:12/31/2005 End:04/05/2006 OBLIGATION COMPLETED
Amt:20,000 Susp: Curr:
Rmks:CUST PD \$43 W/CRED CARD CONF#091749 PER PHONE REQ
NHC050306.

BAIL BAIL NOT FORFEITABLE CXT
Start:12/30/2005 Due:12/30/2005 End:12/31/2005 APPEARED IN COURT
Amt:950 Susp: Curr:

FINE PAY FINE SJG
Start:03/29/2006 Due:03/27/2008 End:
Amt:5,000 Susp:5,000 Curr:

Def. Name: KLEIN, STEPHEN BARTLETT
5:54:28 As of 06/25/2007

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JAIL	COMPLY WITH JAIL SENTENCE	SAF
	Start:08/03/2006 Due:03/27/2008 End:	
	Jail:365 Susp:265 Unit:Days Cfts:Y	
	Rmks:8/3/06: TEN DAYS OF SUSPENDED SENT REVOKED. DEF ORDERED TO DO JCRW(10 DAYS) OLD BAL 365/275.. NEW BAL 365/265.	
JCRW	WORK CREW IN LIEU OF JAIL	SAF
	Start:08/03/2006 Due:03/27/2008 End:	
	Jail:10 Susp: Unit:Days Cfts:N	
Other Case Obligations:		
BALW	BAIL ON A WARRANT	SMY
	Start:09/25/2006 Due: End:05/02/2007 APPEARED IN COURT	
	Amt:1,000 Susp: Curr:	
CCFE	CRIMINAL CONVICTION FEE	IVR
	Start:03/29/2006 Due:03/27/2008 End:05/03/2006 PAID IN FULL	
	Amt:43 Susp: Curr:	
CADD	REPORT ADDR CHANGE TO COURT IN WRITING W/IN 24HR	SJG
	Start:03/29/2006 Due:03/27/2008 End:	
DVTX	DOMESTIC VIOLENCE TREATMENT	SJG
	Start:03/29/2006 Due:03/27/2008 End:	
EHMP	EHM PRIOR TO ADJUDICATION	SJG
	Start:03/27/2006 Due:03/27/2008 End:	
EHMP	EHM PRIOR TO ADJUDICATION	SJG
	Start:03/23/2006 Due:03/29/2006 End:03/29/2006 OBLIGATION COMPLETED	
MHDT	COMPLETE MENTAL HEALTH DIAGNOSIS AND TREATMENT	SJG
	Start:03/29/2006 Due:03/27/2008 End:	
NCLV	NO CRIMINAL LAW VIOLATIONS	SJG
	Start:03/29/2006 Due:03/27/2008 End:	
NCOW	COMPLY WITH WRITTEN NO CONTACT ORDER	SJG
	Start:03/29/2006 Due:03/28/2008 End:	
	Conditions:STAY ONE THOUSAND FEET FROM VICTIM	
	Conditions:STAY ONE THOUSAND FEET FROM VICTIM	
	Conditions:STAY ONE THOUSAND FEET FROM VICTIM	
NCOW	COMPLY WITH WRITTEN NO CONTACT ORDER	SJG
	Start:12/31/2005 Due:06/29/2006 End:03/29/2006 CANCELLED	
	Conditions:NOT TO COME WITHIN 500FT ONE CIVIL STANDBY AUTHORIZED	
	Conditions:	
	Conditions:	
NOWP	NO WEAPONS	SJG
	Start:03/29/2006 Due:03/27/2008 End:	
OTHR	OTHER OBLIGATION	SJG
	Start:12/31/2005 Due:06/29/2006 End:03/29/2006 STRICKEN	
	Rmks:12/31/05: CONDITIONS OF RELEASE: NCLV, NCOW, NOWP,	
	PHONE BLOCKS	
	03/23/06 COURT IMPOSES TWO AHO'S AND EHMP.	

PROB PROBATION
Start:03/29/2006 Due:03/27/2008 End:

SAF

PROB PROBATION
Start:03/29/2006 Due:03/29/2008 End:03/29/2006 STRICKEN

SGJ

** Scheduled Hearings **

Date	Time	Ctrrm	Type	Tape	Judge	Prosecutor	Date	Clk
12/31/2005	10:05	KCJ2	ICA		EISENBERG, A	FAULKNER, W	12/30/2005	TMO
01/11/2006	13:30	1002	IDVPTH		BONNER, F	HAYDEN, S	12/31/2005	CXT
01/27/2006	8:30	1002	RDNSS		BONNER, F	KILPATRIC, K	01/11/2006	TSD
01/31/2006	8:30	1002	MASTER		BONNER, F	FINKLE, M	01/11/2006	TSD
02/09/2006	10:00	1002	MOTION		BONNER, F	FAULKNER, W	02/01/2006	JXH
02/16/2006	10:00	1002	MOTION		BONNER, F	KENNY, J	02/14/2006	JXH
02/17/2006	8:30	1002	RDNSS				02/16/2006	JXH
02/22/2006	8:30	1002	MASTER				01/31/2006	JXH
02/22/2006	8:30	1002	MASTER		BONNER, F	KILPATRIC, K	02/16/2006	JXH
02/22/2006	9:00	1003	JURY		MAMIYA, R	ROBERTSON, R	02/22/2006	JMM
03/10/2006	10:00	1003	RDNSS		HANKINS, D	ROBERTSON, R	02/22/2006	JMM
03/17/2006	10:00	1003	RDNSS		WILSON, S	ROBERTSON, R	03/10/2006	SGJ
03/21/2006	9:00	1003	JURY		MAMIYA, R	HOM, G	02/22/2006	JMM
03/22/2006	9:00	1003	JURY		MAMIYA, R	HOM, G	03/21/2006	SGJ
03/23/2006	9:00	1003	JURY		MAMIYA, R	ROBERTSON, R	03/22/2006	JMM
03/29/2006	9:00	1003	SENT		MAMIYA, R	ROBERTSON, R	03/23/2006	SGJ
08/03/2006	13:30	1003	DVREV		MAMIYA, R	AMAN, H	07/07/2006	JRR
09/18/2006	9:00	1003	REVIEW		MAMIYA, R	AMEN, H	08/03/2006	SAF
09/25/2006	9:00	1003	STATUS		MAMIYA, R	AMAN, H	09/18/2006	JXH
11/09/2006	13:30	1003	RV PB				10/11/2006	JRR
05/02/2007	10:05	KCJ2	ICA		CHARLES, E	GAPPERT, B	05/01/2007	TMO
06/08/2007	9:00	1002	REVOKE		BONNER, F	SARGENT, H	05/02/2007	SMY
07/13/2007	9:00	1002	REVOKE				06/08/2007	CBE

** Events **

Date	Description	
12/30/2005	DEFENDANT BOOKED. BA# 205050936	TMO
12/30/2005	IN-CUSTODY ARRAIGNMENT SCHEDULED FOR 12/31/2005 AT 1005 IN COURTROOM KCJ2	TMO
12/31/2005	DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT DL: 11:21 CLK: CXT. AOD: M. ODAMA. DFNS MTN FOR RELEASE - DENIED. CITY MTN TO SET BAIL AT \$20,000 - GRANTED.	CXT
12/31/2005	DEF SCREENED-CASE REFERRED TO ACA FOR ASSIGNMENT	CXT
12/31/2005	PROBABLE CAUSE FOUND BY COURT	CXT
12/31/2005	CHARGE # 1 12A060100 (ASSAULT) NOT GUILTY PLEA ENTERED	CXT
12/31/2005	NO CONTACT ORDER	CXT

Def. Name: KLEIN, STEPHEN BARTLETT
15:54:28 As of 06/25/2007

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2/31/2005	IN CUSTODY DOMESTIC VIOLENCE PRE-TRIAL HEARING SCHEDULED FOR 01/11/2006 AT 1330 IN COURTROOM 1002	CXT
01/09/2006	NOTICE OF APPEARANCE FILED BY ACA ATTY. ARTHUR T. ALMEREZ WSBA# 27411 ON 1-6-06	RDM
01/11/2006	DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT DL 2:20 CLK:TD ATTY:A.ALMEREZ. TRIAL SETTING: SEE PRE-TRIAL ORDER FOR NOTED MOTIONS AND RULINGS.	TSD
01/11/2006	DEF MOTION FOR REDUCTION OF BAIL OR PR-DENIED. (CS EVENT)	TSD
01/11/2006	MASTER CALENDAR SCHEDULED FOR 01/31/2006 AT 830 IN COURTROOM 1002	TSD
01/27/2006	DF: KLEIN, STEPHEN BARTLETT (15320) DEFENDANT NOT PRESENT. DL 9:35AM	JXH
01/27/2006	CONTINUANCE REQUESTED BY DEFENSE DENIED	JXH
01/31/2006	DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT DL 10:21AM DF ATTY PRESENT ALMEREZ.	JXH
01/31/2006	CONTINUANCE REQUESTED BY THE CITY ATTY IN TRIAL GRANTED.	JXH
01/31/2006	MASTER CALENDAR SCHEDULED FOR 02/22/2006 AT 830 IN COURTROOM 1002	JXH
01/31/2006	MOTION FILED BY ATTY REBECCA ROBERTSON ON 01/31/6 (CS DOCUMENT FILED WITH MASTER CALENDAR CLERK	TXH
02/01/2006	MOTION HEARING SCHEDULED FOR 02/09/2006 AT 1000 IN COURTROOM 1002	JXH
02/09/2006	DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT CLERK LBS DEF ATTY A.ALMEREZ DEF MOTION TO MODIFY NCOW - LIFTING ADDRESS FROM NCO - RESERVED CASE MAY BE REDOCKETED IF DEF CAN PROVIDE PROOF THAT VICTIM NO LONGER RESIDES THERE	LBS
02/13/2006	MOTION FILED 02/10/6 SIGNED 02/17/06 /TO RESCH. (CS EVENT)	TXH
02/14/2006	MOTION HEARING SCHEDULED FOR 02/16/2006 AT 1000 IN COURTROOM 1002	JXH
02/16/2006	DF: KLEIN, STEPHEN BARTLETT (15320) DEFENDANT NOT PRESENT. DL 10:37AM STRIKE HRG. BACK ON MASTER CAL.	JXH
02/16/2006	MASTER CALENDAR SCHEDULED FOR 02/22/2006 AT 830 IN COURTROOM 1002	JXH
02/22/2006	DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT	JMM

CASE CALLED AT MASTER TRANS TO COURTROOM 1003

02/22/2006 JURY TRIAL SCHEDULED FOR 02/22/2006 AT 900 IN JMM
COURTROOM 1003

02/22/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT JMM
CLERK:JMM, DL:10:04 & 10:20. DFNS ATTY: MR. ALMEREZ
CITY MOTION TO MAINTAIN CASE IN COURTROOM 1003 - GRNT.
JOINT MOTION TO CONTINUE CITY ATTORNEY IN TRIAL - GRNT

02/22/2006 DFNS MOTION TO MODIFY NCOW TO RMV ADDRESS ONLY FROM JMM
NCOW - GRANTED. ORDER MODIFYING NCOW S/F (CS EVENT)

02/22/2006 SPEEDY TRIAL RULE WAIVER FILED NEW COMMENCEMENT JMM
DATE:2/22/2006, NEW EXP DATE:5/21/06

02/22/2006 READINESS HEARING SCHEDULED FOR 03/10/2006 AT 1000 IN JMM
COURTROOM 1003

02/22/2006 JURY TRIAL SCHEDULED FOR 03/21/2006 AT 900 IN JMM
COURTROOM 1003

02/28/2006 MOTION AND AFFIDAVIT FOR EXONERATION AND SPECIFYING LKP
REASONS FOR SURRENDER FILED 02/28/06 BY HENRY'S
BAILBONDS, FORWARD TO COURTROOM 1003 (CS EVENT)

03/10/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT SJG
DL: 10:21 CLK SJG DEFENSE SETS 2ND READINESS,
POSSIBLE DISPOSITION.

03/10/2006 DA: ALMEREZ, ARTHUR T (1000010160) PRESENT SJG

03/10/2006 READINESS HEARING SCHEDULED FOR 03/17/2006 AT 1000 IN SJG
COURTROOM 1003

03/17/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT JMM

03/17/2006 DA: ALMEREZ, ARTHUR T (1000010160) PRESENT JMM
CLERK:JMM, DL:11:56. PARTIES READY, CASE PROCEEDING
TO TRIAL.

03/21/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT SJG
DL: 11:19 CLK SJG PRELIMINARY MOTIONS

03/21/2006 DA: ALMEREZ, ARTHUR T (1000010160) PRESENT SJG

03/21/2006 DEFENSE MARKS EXHIBIT #1, LETTER FROM GARY FAVERO SJG
(ONLY FOR 3.5/3.6 HRG).

03/21/2006 MOTIONS IN LIMINE; 3.5/3.6 HEARING SJG

03/21/2006 OF: SUNDIN, CASEY L (4236) TESTIFIED SJG

03/21/2006 CITY MARKS EXHIBIT #2, STATEMENT FORM #05-551612, SJG
PAGE 1 OF 2; ADMITTED. CITY MARKS EXHIBIT #3, EVENT
HISTORY #S0551612; ADMITTED.

03/21/2006	DF: KLEIN, STEPHEN BARTLETT (15320) TESTIFIED	SJG
03/21/2006	ARGUMENTS/RULINGS	SJG
03/21/2006	DL: 4:16 PROSPECTIVE JURORS ESCORTED INTO COURTROOM, COURT GIVES OVERVIEW, CITY/DEFENSE AND WITNESSES INTRODUCED TO COURT, JURORS SWORN-IN.	SJG
03/21/2006	VOIRE DIRE (CS EVENT)	SJG
03/21/2006	DL: 5:13 JURY PANEL SELECTED, SWORN-IN AND COURT READS INSTRUCTIONS. JURY EXCUSED FOR THE DAY.	SJG
03/21/2006	JURY TRIAL SCHEDULED FOR 03/22/2006 AT 900 IN COURTROOM 1003	SJG
03/22/2006	DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT	JMM
03/22/2006	DA: ALMEREZ, ARTHUR T (1000010160) PRESENT CLERK:JMM, DL:00:00:00. COURT RESUMED WITH JURY TRIAL FROM 3/21/06.	JMM
03/22/2006	DFNS RAISED ISSUE RE: NOTICE TO COMPEL (COURT WILL REVIEW NOTES IN-CAMERA. DFNS RAISED ISSUE RE: PRIOR INCIDENTS OF VIOLENT BEHAVIOR:	JMM
03/22/2006	COURT WILL ALLOW THE FOLLOWING TO BE TESTIFIED TO RE: VIOLENT BEHAVIOR: 1.HIT IN FACE (NOV.) 2.CHASED WITH KNIFE 3.CHASED WITH KNIFE - STUCK IN DOOR NOTHING AS TO DRUGS.	JMM
03/22/2006	DEFENSE EXHIBIT# 4 (NOTES) MARKED - ONLY	JMM
03/22/2006	JURY TRIAL PROCEEDING	JMM
03/22/2006	OPENING STATEMENTS: CITY DEFENSE CITY PRESENTS ITS EVIDENCE	JMM
03/22/2006	OF: SUNDIN, CASEY L (4236) TESTIFIED	JMM
03/22/2006	PLAINTIFFS EXHIBIT# 3 (SPD LOG) MARKED	JMM
03/22/2006	WT:BOYER, MICHAEL (CITY) TESTIFIED	JMM
03/22/2006	PLAINTIFFS EXHIBIT# 5 (911 TAPE) MARKED ONLY - PLAYED IN OPEN COURT	JMM
03/22/2006	WT:FREDERICKSON, MICHAEL (CITY) TESTIFIED	JMM
03/22/2006	PLAINTIFFS EXHIBIT# 5 (911 TAPE) PREVIOUSLY MARKED REPLAYED IN OPEN COURT	JMM
03/22/2006	CITY MOTION TO ADMIT PLAINTIFFS EXHIBIT 5 - GRANTED CITY RESTED	JMM

JURORS EXCUSED FOR THE EVENING. CASE CONTINUED ONE DAY
TO COMPLETE THE BALANCE OF JURY TRIAL.

03/22/2006 JURY TRIAL SCHEDULED FOR 03/23/2006 AT 900 IN JMM
COURTROOM 1003

03/23/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT JMM

03/23/2006 DA: ALMEREZ, ARTHUR T (1000010160) PRESENT JMM
CLERK:JMM, DL:9:50. COURT RESUMED WITH BALANCE OF
JURY TRIAL.

03/23/2006 CITY PROVIDED COURT WITH REDACTED COPY OF 911 TAPE. JMM
REDACTED COPY TO BE MARKED AS PLAINTIFFS EX 5 AND
ADMITTED. (CS EVENT)

03/23/2006 PLAINTIFF'S EXHIBIT# 5 (REDACTED COPY 911 TAPE) MARKED, JMM
ADMITTED

03/23/2006 DEFENSE EVIDENCE (CS EVENT) JMM

03/23/2006 DF: KLEIN, STEPHEN BARTLETT (15320) TESTIFIED JMM

03/23/2006 PLAINTIFF'S EXHIBIT# 5A (REDACTED COPY OF 911 TAPE) JMM
PLAYED IN OPEN COURT

03/23/2006 DEFENSE RESTED JMM
DISCUSSION - JURY INSTRUCTIONS
EXCEPTIONS TO INSTRUCTIONS
COURT READING INSTRUCTIONS

03/23/2006 CLOSING ARGUMENTS: CITY'S JMM
DEFENSE
CITY'S REBUTTAL

03/23/2006 DL: 2:55 JURY RETURNS WITH VERDICT OF GUILTY. CITY SJG
MOVES TO SET BAIL - DENIED. DEFENSE MOVES TO SET
SENTENCING OVER - GRANTED W/NEW CONDITIONS OF RELEASE.

03/23/2006 NO CONTACT ORDER SJG
01/01/1905

03/23/2006 NO CONTACT ORDER SJG

03/23/2006 SENTENCING SCHEDULED FOR 03/29/2006 AT 900 IN SJG
COURTROOM 1003

03/27/2006 EHM ENROLLMENT REPORT/EHM STARTED 03/27/06. COURT SJG
ORDERED SHOULD DEFENDANT FILE AN APPEAL HE IS ORDERED
TO ENROLL IN EHM.

03/29/2006 CASE REFERRED TO PROBATION BXA

03/29/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT SJG
DL: 10:10 CLK SJG VICTIM ROY PRESENT AND ADDRESSES
THE COURT. COURT IMPOSES SENTENCE AND SHOULD DEFENDANT
POST APPEAL BOND ALL CONDITIONS WILL BE STAYED WITH THE

Def. Name: KLEIN, STEPHEN BARTLETT
5:54:28 As of 06/25/2007

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EXCEPTION OF JAIL PER THE COURT.

03/29/2006 DA: ALMEREZ, ARTHUR T (1000010160) PRESENT	SJG
03/29/2006 CHARGE # 1 12A060100 (ASSAULT) GUILTY FINDING ENTERED	SJG
03/29/2006 CHARGE # 1 12A060100 (ASSAULT) SUSPENDED SENTENCE	SJG
03/29/2006 JURISDICTION END DATE SET TO 03/27/2008	SJG
03/29/2006 TO BE GIVEN CREDIT FOR TIME SERVED	SJG
03/29/2006 NO CONTACT ORDER	SJG
03/29/2006 NO CONTACT ORDER 03/13/1957	SJG
03/29/2006 NO CONTACT ORDER	SJG
03/29/2006 PER THE COURT SHOULD DEFENDANT POST APPEAL BOND HE WILL BE REQUIRED TO BE PLACED ON EHM PENDING APPEAL.	SJG
03/29/2006 EHM REPORT CITING TERMINATION; REMOVED FROM EHM STRICKEN AFTER THREE (3) DAYS.	SJG
04/04/2006 NOTICE OF APPEAL FILED ON 03/31/2006, SUPRCT CAUSE# 61040160	SXP
04/05/2006 BOND EXONERATED	SJG
04/07/2006 BOND RETURNED TO SURETY	RMS
04/09/2006 DEFENDANT BOOKED. BA# 206013947	TXC
04/13/2006 TRANSCRIPT ISSUED	SXP
07/07/2006 DOMESTIC VIOLENCE REVIEW SCHEDULED FOR 08/03/2006 AT 1330 IN COURTROOM 1003	JRR
07/07/2006 REVIEW HEARING SCHEDULED FOR FTC-NCO, NEW VIOLATION PER PC GARRIN ROSS	JRR
07/31/2006 DEF PHONED FOR PHONE # TO OPD (CS EVENT)	RRS
08/02/2006 STATUS/REVIEW REPORT RECEIVED FROM GARRIN ROSS	JMM
08/03/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT FTR LOC: 2:38. CLK SAF. DEF ADMITS ALLEGATIONS OF NEW CONVICTION.	SAF
08/03/2006 DA: SAMUEL, ANNA (1000008842) PRESENT	SAF
08/03/2006 GARIN ROSS, MPS COUNSELOR, PRESENT AND ADDRESSED COURT	SAF
08/03/2006 CHARGE# 1 12A060100 (ASSAULT) 10 Days OF SUSP COMPLY WITH JAIL SENTENCE REVOKED	SAF

08/03/2006	REVIEW HEARING SCHEDULED FOR 09/18/2006 AT 900 IN COURTROOM 1003	SAF
08/04/2006	NOTICE OF APPEARANCE FILED BY ACA: ANNA I SAMUEL, WSBA# 23444	ALS
09/18/2006	STATUS/REVIEW REPORT RECEIVED FROM MPS COUNSELOR C. BELL DANIEL.	MAK
09/18/2006	DF: KLEIN, STEPHEN BARTLETT (15320) DEFENDANT NOT PRESENT. DL 9:56. CASE CONT FOR VERIFICATION OF WORK CREW MPS FILE IN CT AND RETAINED	JXH
09/18/2006	OBLIGATION REVIEW DATE SCHEDULED FOR 09/25/2006 AT 900 IN COURTROOM 1003	JXH
09/25/2006	DF: KLEIN, STEPHEN BARTLETT (15320) DEFENDANT NOT PRESENT. DL 11:57. CLK SAF. MPS REPT IN COURT AND RETAINED.	SAF
09/25/2006	STATUS/REVIEW REPORT RECEIVED FROM CAROL BELL.	SAF
09/25/2006	BENCH WARRANT # 990316012 ISSUED 09/25/2006	SAF
10/11/2006	REVIEW PROBATION HEARING SCHEDULED FOR 11/09/2006 AT 1330 IN COURTROOM 1003	JRR
10/11/2006	REVIEW PROBATION HEARING HRNG SCHDLD FOR 11/09/2006 AT 1330 IN DEPT 1003, CANCELLED!	JRR
11/07/2006	NOTICE OF APPEARANCE FILED BY TDA ATTY NADEN WSBA #16819	SXP
12/04/2006	TRANSCRIPT ISSUED	SXP
12/19/2006	NOTICE OF WITHDRAWAL FILED 121906 BY ALYN PEARSON. (CS EVENT)	JRT
05/01/2007	JRSDCT END DATE EXTENDED 218 DAYS FROM 03/27/08 TO 10/31/08	TMO
05/01/2007	BENCH WARRANT # 990316012 CLEARED 05/01/2007 (BOOKED INTO JAIL)	TMO
05/01/2007	DEFENDANT BOOKED. BA# 207018748	TMO
05/01/2007	IN-CUSTODY ARRAIGNMENT SCHEDULED FOR 05/02/2007 AT 1005 IN COURTROOM KCJ2	TMO
05/02/2007	DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT DL: 2:02, CLERK: RD, AOD: C. JACKSON, TDA. ALLEGATION ADMITTED - COMMITTED ON 2 DAYS WORKCREW. CITY FILED NOTICE OF PROBATION VIOLATION (NCLV) SET FOR REVOKE.	SMY
05/02/2007	REVOCATION HEARING SET BY COURT SCHEDULED FOR 06/08/2007 AT 900 IN COURTROOM 1002	SMY

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Def. Name: KLEIN, STEPHEN BARTLETT

5:54:28 As of 06/25/2007

05/31/2007	STATUS/REVIEW REPORT SUBMITTED BY PROBATION	JXH
06/08/2007	DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT FTR 9:44; CLERK CBE; ATTY M NADED. MPS RPRT IN CT. ACA MTN TO WITHDRAW; SUBTITUTE TDA COUNSEL - GRANTED.	CBE
06/08/2007	CONTINUANCE REQUESTED BY DEFENSE CONSULTATION & INVESTIGATION-GRANTED.	CBE
06/08/2007	REVOCATION HEARING SET BY COURT SCHEDULED FOR 07/13/2007 AT 900 IN COURTROOM 1002	CBE
06/11/2007	NOTICE OF APPEARANCE FILED BY ACA ATTY CHOQUETTE WSBA 36898; FILED 6/04/07	SXP

** Warrants **

Wrrnt Nr	Issued	Served	Wrrnt/ Clrn Type	Description
090316012	09/25/2006	05/01/2007	BW JL	BENCH WARRANT BOOKED INTO JAIL
Reasons: FAILURE TO APPEAR FOR OBLIGATION REVIEW HEARING				
Rstrcs: NO PR (FTA/STATUS, FTC/WORKCREW)				
Warrant issued by: JUDGE RON MAMIYA				

** Accounting Summary **

Post Date	Bail Amount	Type	Paid	Method	Status	DC	Posted By
02/03/2006	20000.00	BAIL	20000.00	BO	E		HENRY'S BAIL BONDS

chg :	Obl :	Orig Obl :	Obl :	TP :
q# :	Type :	Amount :	Bal Due :	Status :
1	BAIL	2000.00	2000.00	

* Total due on this case: 2000.00 **

I. IDENTITY OF PARTY & RELIEF REQUESTED

Stephen Klein asks this court to take judicial notice of the fact reflected in the Seattle Municipal Court record in his case that he quashed the outstanding warrant that served as a basis for the City's motion to dismiss his appeal. Appendix 1.

II STATEMENT OF RELEVANT FACTS

On May 1, 2007, Mr. Klein was booked into the King County Jail on an outstanding warrant issued in Seattle Municipal Court No. 480244, the case which is the subject of Mr. Klein's appeal. Appendix 1 (docket). The next day, Mr. Klein appeared in Seattle Municipal Court and was committed on the remaining 2 days of the unserved portion of his sentence.

III AUTHORITY

Courts have the authority to take judicial notice of undisputed, readily determined facts at any stage of the proceedings, including appeal. ER 201.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

ER 201(b). A court generally may take judicial notice of court records, particularly in the same case. State v. Duran-Davila, 77 Wn.App. 701, 892 P.2d 1125 (1995) (noting that the "same case" limitation has been

criticized). The fact that Mr. Klein was booked on the warrant that was the factual basis for the City's motion to dismiss is a judicially cognizable fact. It is not subject to reasonable dispute because it is reported in the Seattle Municipal Court's docket in this case, the accuracy of which cannot reasonably be questioned.

The fact that Mr. Klein has been returned to custody and is attending to his probation matters in the municipal court is significant *because Mr. Klein's appeal has not yet been dismissed*. The U.S. Court of Appeals for Seventh Circuit held that due process¹ prevents a state from dismissing a fugitive's appeal where he returns to the jurisdiction before the appeal is dismissed. Ruetz v. Lash, 500 F.2d 1225, 1229-30 (7th Cir. 1974) (appellant did not "deliberately bypass" state courts where appeal dismissed under the fugitive disentitlement doctrine after appellant was returned to custody). The court explained.

In none of the [fugitive disentitlement] cases cited above had the appellant returned to the jurisdiction of the court before the appeal was dismissed. Indeed, many of the courts, in anticipation or hopes of the appellant's return, provided a grace period before actually dismissing the case.

Appellant's motion to correct errors, a requisite to filing an appeal, was timely filed. No action was taken thereon until appellant had been returned to the jurisdiction of the court. His request for appeal only then was denied.

¹Where states provide an appeal as of right from a criminal conviction, "the scheme for appellate review must conform to *fourteenth amendment* requirements of equal protection and due process." Ruetz, 500 F.2d at 1229, *citing*, Griffing v. Illinois, 351 U.S. 12, 18 (1956) (*italics in original*).

Under this circumscribed set of facts, we are unable to discern any rational basis for the court's action.

Ruetz, 500 F.2d at 1230.

Mr. Klein's appeal has not yet been dismissed. Since he has returned and submitted to the municipal court's jurisdiction, dismissal of his would violate his federal constitutional right to due process.

Respectfully submitted this 27th day of June, 2007,

Christine A. Jackson #17192
Attorney for Respondent Klein

FILED AS ATTACHMENT
TO E-MAIL